

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN RE:)
)
AMENDMENTS TO THE LOCAL RULES OF) Misc. No. 2003-06
CIVIL PROCEDURE)
_____)

NOTICE INVITING COMMENT

The Court has previously proposed the creation of a new Local Rule 5.4. The public and members of the bar are hereby given an additional opportunity to comment on Local Rule 5.4. Such comment may be submitted to the Clerk of Court in writing no later than May 15, 2007, at 5:00 p.m. Local Rule 5.4 will take effect on June 1, 2007, and will remain in effect unless modified as a result of such comment from the public and bar. The current version of Local Rule 5.4 is attached hereto.¹

Dated: May 8, 2007

_____/s/
CURTIS V. GÓMEZ
Chief Judge

¹ Suggestions received during the April 12, 2007, hearing on the proposed rule have been incorporated in the version of the rule that is attached to this notice.

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: /s/
Deputy Clerk

Copies:

Hon. Geoffrey W. Barnard
Hon. George W. Cannon
Wilfredo F. Morales, Clerk of the Court
Carol C. Jackson
Cicely Francis
Theresa Thomas
Monica Ruhle
Olga Schneider
STT Law Clerks
STX Law Clerks
Members of the V.I. Bar

Rule 5.4 Electronic Filing

Rule 5.4.1 – Scope of Electronic Filing

Except as provided by these Rules or by order of the Court, all cases are assigned to the Electronic Filing System. Unless otherwise provided by these Rules or by order of the Court, all pleadings and other documents required to be filed with the Court by a Filing User (see Local Rule 5.4.2) in connection with a case assigned to the Electronic Filing System must be electronically filed. All such cases shall be filed in accordance with Local Rule 5.1 and the Policies and Procedures Manual for Electronic Case Filing in the District Court of the V.I. located on our website: <http://vid.uscourts.gov>. Payment must be made when documents that require payment are filed electronically. Payment can be made by cash, check or money order or by such electronic payment that may be approved in the Policies and Procedures Manual. If payment is not received by the close of business on the next working day after filing, the Court shall take necessary action which may include striking the document or dismissal of the action.

In a case assigned to the Electronic Filing System after it has been opened, parties who are Filing Users, or are represented by Filing Users, must promptly provide the Clerk with electronic copies of all documents previously provided in paper form on which they subsequently rely in electronically filed documents. All such subsequent documents must be filed by Filing Users electronically except as provided in these Rules or as ordered by the Court.

Commentary

1. The Rule provides that all cases are assigned to the electronic filing system unless excluded by local rule or by order of the Court. It also establishes a presumption that all documents filed in cases assigned to the electronic filing system should be electronically filed. The Rule makes electronic filing mandatory for attorneys and for *pro se* parties who voluntarily register to use the electronic filing system under Local Rule 5.4.2. It is intended to make electronic filing the norm, as it already is in many courts.
2. For cases assigned to the electronic filing system after documents have already been filed conventionally, the Rule states that the parties must provide electronic copies of all previously filed documents on which they rely in electronically filed documents.
3. Fees for electronic filing can be paid by cash, check or money order or by such electronic payment that may be approved in the Policies and Procedures Manual.
4. Electronic case filing raises privacy concerns. Electronic case files can be more easily accessible than traditional paper case files, so there is a greater risk of public dissemination of sensitive information found in case files. The Judicial Conference has adopted a policy recommending that certain personal identifying information be excluded from all documents filed with the Courts. See Local Rule 5.4.12.

Rule 5.4.2 – Eligibility, Registration, Passwords

Attorneys who intend to practice in this Court, including those regularly admitted or admitted *pro hac vice* to the bar of the Court and attorneys authorized to represent the United States or Government of the U.S. Virgin Islands without being admitted to the bar, must register as Filing Users of the Court's Electronic Filing System in a form prescribed by the Clerk. Attorneys who are unable to register (e.g., because they do not have an Internet e-mail address) must receive specific exemption from the Court.

If the Court permits, a party to a pending civil action who is eligible to proceed *pro se* may register as a Filing User in the Electronic Filing System solely for purposes of the action in a form prescribed by the Clerk. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

Registration as a Filing User constitutes consent to electronic service of all documents as provided in these Rules in accordance with the Federal Rules of Civil Procedure.

Once registration is completed, the Filing User shall receive notification of the user log-in and password. Filing Users must protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Filing Users may be subject to sanctions for failure to comply with this provision.

Once registered, a *pro se* Filing User may withdraw from participation in the Electronic Filing System by providing the Clerk's office with written notice of the withdrawal.

Commentary

1. The Rule provides that attorneys admitted *pro hac vice* must register as filing users. The Rule also recognizes that the Court may wish under certain circumstances to permit *pro se* filers to take part in electronic case filing. Such participation is left to the discretion of the Court. The Rule also contains language covering attorneys representing the United States or the Government of the U.S. Virgin Islands.

2. The Rule provides that a person who registers with the System (a Filing User) thereby consents to electronic service of documents subject to the electronic filing system. Amendments to the Federal Rules of Civil Procedure (Fed.R.Civ.P. 5(b)) permit electronic service on a person who consents "in writing." The Committee Notes indicate that the consent may be provided by electronic means. A Court may "establish a registry or other facility that allows advance consent to service by specified means for future action." Thus, the Rule uses CM/ECF registration as a means to have parties consent to receive service electronically.

Rule 5.4.3 – Consequences of Electronic Filing

Electronic transmission of a document to the Electronic Filing System consistent with these Rules, together with the transmission of a Notice of Electronic Filing from the Court,

constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and these Rules, and constitutes entry of the document on the docket kept by the Clerk under Fed.R.Civ.P. 58 and 79.

Before filing a scanned document with the Court, a Filing User must verify its legibility.

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically, a document filed electronically is deemed filed on the date and at time stated on the Notice of Electronic Filing from the Court.

Filing a document electronically does not alter the filing deadline for that document. Unless otherwise ordered by the Court a filing must be completed before 11:59 p.m. U.S. Virgin Islands time in order to be considered timely filed that day.

Commentary

1. The Rule provides a “time of filing” rule that is analogous to the traditional system of file stamping by the Clerk’s office. A filing is deemed made when it is acknowledged by the Clerk’s office through the CM/ECF system’s automatically generated Notice of Electronic Filing. Counsel should be aware of the risks that reliance on the time of filing permitted by this Rule, which runs hours after the Clerk’s office is closed, may present for such purposes as the statute of limitations.
2. The Rule makes clear that electronically filed documents are considered to be entries on the official docket.

Rule 5.4.4 – Entry of Court-Issued Documents

All orders, decrees, judgments, and proceedings of the Court shall be filed in accordance with these Rules. Such filing shall constitute entry on the docket kept by the Clerk under Fed.R.Civ.P. 58 and 79. All signed orders shall be filed electronically by the Court or Court personnel. Any order or other Court-issued document filed electronically without the original signature of a Judge or Clerk has the same force and effect as if the Judge or Clerk had signed a paper copy of the order.

Orders may also be issued as “text-only” entries on the docket, without an attached document. Such orders are official and binding.

The Court may sign, seal and issue a summons electronically, but a summons may not be served electronically.

A Filing User submitting a document electronically that requires a Judge’s signature must promptly deliver the document in such form as the Court requires.

Commentary

1. The Rule states that an electronically filed Court order has the same force and effect as an order conventionally filed. Judges in many Courts authorize “text-only” orders, which are docket entries that themselves constitute the order. These text-only orders, which are generally used for routine matters, do not require production of a .pdf document.
2. The Rule contemplates that a Judge can authorize personnel, such as a law clerk or judicial assistant, to electronically enter an order on the Judge’s behalf.
3. The Rule leaves the method for submitting proposed orders to the discretion of the Court. Courts have been using a variety of methods, including having them sent by email to the Court in word-processing format or having them filed as .pdf documents.
4. The Rule provides that the Court may sign, seal and issue a summons electronically. This authorizes only issuance of the summons. A summons may not be served electronically, however.

Rule 5.4.5 – Attachments and Exhibits

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits conventional filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. A Filing User must, however, provide the complete document from which excerpts are made to parties not known to have a copy. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The Court may authorize or require parties to file additional excerpts or the complete document.

Commentary

1. One issue that has arisen in most Courts using electronic filing relates to attachments or exhibits not originally available to the filer in electronic form. A document that must be scanned (or imaged) into Portable Document Format before filing creates a much larger electronic file than one prepared directly on the computer (e.g., through word processing). The large documents can take considerable time to file and retrieve. The Rule provides that, if the case is assigned to the electronic filing system, the party must file this type of material electronically, unless the Court specifically permits conventional filing.
2. It is often the case that only a small portion of a much larger document is relevant to the matter before the Court. In such cases, scanning the entire document imposes an inappropriate burden on both litigants and the Courts. To alleviate some of this inconvenience, the Rule provides that a Filing User must submit as the exhibit only the relevant excerpts of a larger

document. The opposing party then has a right to submit other excerpts of the same document under the principle of completeness.

3. This Rule is not intended to alter traditional rules with respect to materials that are before the Court for decision. Thus, any material on which the Court is asked to rely must be specifically provided to the Court.

Rule 5.4.6 – Sealed Documents

Documents ordered to be placed under seal may be filed conventionally or electronically as authorized by the Court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. If filed conventionally, a paper copy of the order must be attached to the documents under seal and delivered to the Clerk.

Commentary

1. The Rule recognizes that other laws may affect whether a motion to file documents under seal, or an order authorizing the filing of such documents, can or should be electronically filed. It is possible that electronic access to the motion or order may raise the same privacy concerns that gave rise to the need to file a document conventionally in the first place. However, CM/ECF is now capable of accepting sealed documents electronically from filing users, either directly into a sealed case in which the attorney is a participant or as a sealed filing in an otherwise unsealed case as coordinated with the office of the Clerk of the Court.

2. See Local Rule 5.4.12 for other provisions addressing privacy concerns arising from electronic filing.

3. See Local Rule 5.4.9, which addresses service of sealed documents filed electronically.

Rule 5.4.7 – Retention Requirements

Documents (excluding depositions) that are electronically filed and require original signatures other than that of the Filing User must be filed with the Court in paper form by the Filing User. The Court shall maintain such documents for five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

Commentary

1. Because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future. The Rule requires retention only of those documents containing original signatures of persons other than the person who files the document electronically. The filer's use of a log-in and password to file the document is itself a signature under the terms of Local Rule 5.4.8.

2. The Rule requires Filing Users to file such documents with the Court and specifies a five year retention period after the time for all appeals expires.

Rule 5.4.8 – Signatures

The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of Fed.R.Civ.P. 11, other Federal Rules of Civil Procedure, these Rules, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block and must set forth the Filing User's name, address, telephone number and the attorney's U.S. Virgin Islands bar registration number, if applicable. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

Documents containing the signature of non-Filing Users are to be filed electronically with the signature represented by a "s/" and the name typed in the space where a signature would otherwise appear, or as a scanned image.

Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the Court.

Commentary

1. Signature issues are a subject of considerable interest and concern. The CM/ECF system is designed to require a log-in and password to file a document. The Rule provides that use of the log-in and password constitutes a signature, and assures that such a signature has the same force and effect as a written signature for purposes of the Federal Rules of Civil Procedure, including Fed.R.Civ.P. 11, and any other purpose for which a signature is required on a document in connection with proceedings before the Court.

2. Some users of electronic filing systems have questioned whether an s-slash requirement is worth retaining. The better view is that an s-slash is necessary; otherwise there is no indication that documents printed out from the website were ever signed. The s-slash provides some indication when the filed document is viewed or printed that the original was in fact signed.

3. The second paragraph of the Rule does not require an attorney or other Filing User to personally file his or her own documents. The task of electronic filing can be delegated to an

authorized agent, who may use the log-in and password to make the filing. However, use of the log-in and password to make the filing constitutes a signature by the Filing User under the Rule, even though the Filing User does not do the physical act of filing.

4. Issues arise when documents being electronically filed have been signed by persons other than the filer, e.g., stipulations and affidavits. For documents signed by individuals without log-ins and passwords (non-Filing Users), the Rule provides that the signature can appear as a “s/” or as a scanned image.. The Rule provides for considerable flexibility in the filing of documents signed by more than one party, e.g., stipulations.

Rule 5.4.9 – Service of Documents by Electronic Means

The “Notice of Electronic Filing” that is automatically generated by the Court’s Electronic Filing System, except as provided below, constitutes service of the filed document on Filing Users. Parties who are not Filing Users must be served with a copy of any pleading or other document filed electronically by an alternate method in accordance with the Federal Rules of Civil Procedure and these Rules.

In the absence of a Notice of Electronic Filing, service of any sealed document by an alternate method, in accordance with the Federal Rules of Civil Procedure and these Rules, is required.

A certificate of service must be included with all documents that are served, including those that are filed electronically, indicating that service was accomplished through the Notice of Electronic Filing for parties and counsel who are Filing Users and indicating how service was accomplished on any party or counsel who is not a Filing User.

Commentary

1. The amendments to the Federal Rules (Fed.R.Civ.P. 5(b)) authorizing service of documents by electronic means do not permit electronic service of process for purposes of obtaining personal jurisdiction (i.e., Rule 4 service). The Rule covers only service of documents after the initial service of the summons and complaint.

2. The CM/ECF system automatically generates a Notice of Electronic Filing at the time a non-sealed document is filed with the system. The Notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice by e-mail to retrieve the document automatically. The CM/ECF system automatically sends this Notice to all case participants registered to use the electronic filing system. This Notice itself constitutes service. See note 6, below, for information on when a Notice of Electronic Filing is generated for an electronic filing pertaining to a sealed case or sealed document.

3. Parties who are not Filing Users are not deemed under the Rules to have consented to electronic service of the Notice of Electronic Filing. They must be served in some other way

authorized by the Federal Rules of Civil Procedure (Fed.R.Civ.P. 5(b)). Under the Rules, they can be served in the traditional way with a paper copy of the electronically filed document, or they can consent in writing to service by any other method, including other forms of electronic service such as fax or direct e-mail.

4. Fed.R.Civ.P. 6(e) provides that the three additional days to respond to service by mail will apply to electronic service as well.

5. The Rule requires a separate certificate of service to be included with the filed document indicating that the document was electronically filed using the CM/ECF system and the manner, electronically through the Notice of Electronic Filing or otherwise, in which parties were served.

6. Note that CM/ECF introduces the capability, if a Court so chooses, to allow attorneys to electronically file into sealed cases or to electronically file sealed documents into otherwise unsealed cases. For most sealed filings, no Notice of Electronic Filing will be produced. Production of a Notice of Electronic Filing will depend on whether the docket entry and case are sealed from public view. Generally, under the default settings, CM/ECF will issue a Notice of Electronic Filing only when the filed document itself is sealed, but the docket entry for the document and the rest of the case file remain publicly available. Electronic filings in sealed cases do not generate a Notice of Electronic Filing, nor do electronic filings in otherwise unsealed cases in which both the docket entry and the attached document are sealed. The Rule requires service by an alternate method in all situations involving a sealed filing, unless the Court allows service through the Notice of Electronic Filing (i.e., in an otherwise unsealed case where the document is sealed but the docket entry is unsealed).

Rule 5.4.10 – Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the Clerk shall transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Civ.P. 77(d). The Clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Civil Procedure.

Commentary

1. Fed.R.Civ.P. 77(d) authorizes electronic notice of Court orders where the parties consent. The Rule provides that for all Filing Users in the electronic filing system, electronic notice of the entry of an order or judgment has the same force and effect as traditional notice. The CM/ECF system automatically generates and sends a Notice of Electronic Filing upon entry of the order or judgment. Except in connection with a text only order, the contents of which appear on the docket screen, the Notice contains a hyperlink to the document.

Rule 5.4.11 – Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure and who is

unable to make a timely filing by traditional means must seek appropriate relief from the Court.

Commentary

1. CM/ECF is designed so that filers access the Court through its Internet website. The Rule addresses the possibility that a party may not meet a filing deadline because the Court's website is not accessible for some reason. Cf. Fed.R.Civ.P. 6 (permitting extension of time when "weather or other conditions have made the office of the Clerk of the District Court inaccessible"). The Rule also addresses the possibility that the filer's own unanticipated system failure might make the filer unable to meet a filing deadline. In either case, however, the Rule requires a timely filing by traditional means if possible.

2. The Rule does not require the Court to excuse the filing deadline allegedly caused by a system failure. The Court has discretion to grant or deny relief in light of the circumstances.

Rule 5.4.12 – Public Access

Parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the Court, including exhibits, whether filed electronically or on paper, unless otherwise ordered by the Court:

- a. Social Security numbers. If an individual's Social Security number must be included, only the last four digits of that number should be used.
- b. Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- c. Dates of birth. If an individual's date of birth must be included, only the year should be used.
- d. Financial account numbers. If financial account numbers are relevant, only the last four digits should be used.

A party wishing to file a document containing the personal data identifiers listed above may:

- a. file an unredacted version of the document under seal, or
- b. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list shall be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal and may be amended as of right.

The unredacted version of the document or the reference list shall be retained by the Court as part of the record. The Court may, however, still require the party to file a redacted

copy for the public file.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk shall not review documents for compliance with this rule.

Rule 5.4.13– Hyperlinks

Electronically filed documents may contain the following types of hyperlinks:

(A) Hyperlinks to other portions of the same document; and

(B) Hyperlinks to a location on the Internet that contains a source document for a citation.

Hyperlinks to cited authority do not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, is part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document.

Commentary

1. Hyperlinks are a connection from one point of electronic data to another. The federal judiciary's guidelines for electronic case filing have been modified to permit hyperlinks in documents filed in Courts' CM/ECF systems.

2. Because documents in the CM/ECF system do not have fixed URL addresses, the system precludes hyperlinking between documents within the CM/ECF system. Thus, hyperlinks are only permitted within a single document or to sites outside the CM/ECF system.

3. Hyperlinks are a convenient means of accessing material cited in electronic documents. Any electronically filed document that contains a hyperlink must also contain the standard citation to the same material. This requirement ensures that anyone working with a printed version of the document has the necessary citation, and that subsequent failure of a hyperlink will not preclude finding the cited material.

4. Just as the complete text of a document cited in a brief or other filing in support of a legal proposition, unless specifically quoted, is not considered part of the brief, the hyperlink and the site to which it refers are not considered part of the brief. Thus, they will not be considered part of the record.

5. Because hyperlinks may be to sites outside the control of the Court, the Court does not take responsibility for the viability of those links, nor does it take responsibility for the content of any linked site. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the content of the filed document.